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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,585	12/21/2000	Mark D. Braxton	GP-301127	2035

7590 07/14/2004

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EXAMINER

USTARIS, JOSEPH G

ART UNIT	PAPER NUMBER
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2616

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DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,585

Applicant(s)

BRAXTON, MARK D.

Examiner

Joseph G Ustaris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment dated 12 May 2004 in application 09/745,585.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russo (US006025868A) in view of Blacketter et al. (US 20030204854A1).

Russo discloses a stored program pay-per-play system where a controller or "entertainment device" scans or "monitors" program schedules and selects programs or "for-demand movie data" to record based on viewer/listener preferences (See column 3 lines 5-25 and column 4 line 20). Furthermore, the controller disclosed by Russo also provides conventional video program service or "conventional entertainment" (See column 3 lines 45-55). The controller receives the programs and stores them on a storage unit (See Fig. 2 element 110 and column 7 lines 43-53). The controller provides a list or "selection of choices" to the user of the stored titles or "stored for-demand movie data", where the user can select a stored title or "designating an entertainment choice" to be viewed or played or "designated entertainment choice to provide entertainment to

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the user" (See column 10 line 58 – column 11 line 5). However, Russo does not disclose a method or system where the controller can monitor the channels as a background function undetectable by the user.

Blacketter et al. discloses a system for enhancing a video cable system. The system provides a means for sending additional information, such as web pages, along with the broadcast video. In order to activate the additional information, the system monitors the channels for a trigger signal. The viewer could be watching a program while the system monitors the current or different channel, thus being undetectable by the user (See paragraph 0021, 0030, and 0038). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the controller disclosed by Russo to be able to monitor the channels without the user knowing, as taught by Blacketter et al., in order to provide the user with a personalized viewing experience without any interruption from the system, which is working in the background.

Response to Arguments

3. Applicant's arguments filed 12 May 2004 have been fully considered but they are not persuasive.

The objection to claims 1 and 4 and the rejection of claims 8, 9, and 10 under 35 U.S.C. 112, second paragraph, is now withdrawn in view of the amendments.

Applicant argues that Russo does not disclose a system that can monitor channels as a background function. Russo does disclose monitoring program schedules

and programs or "for-demand movie data" that are broadcasted as discussed in claim 3 above. Russo does not disclose the monitoring function as a background function; however, Blackketter teaches this limitation.

Applicant further argues that Blackketter does not monitor channels for movie data. However, Russo already meets this limitation. Blackketter teaches that the monitoring of channels can be performed without the user's knowledge as discussed in claim 3 above.

Applicant further argues that Blackketter does not disclose an example where the information resource is replaced by for-demand movie data. However, Russo discloses that the system can be easily adapted to provide and store other media, i.e. video games and etc. (See column 3 lines 45-55). Therefore, inherently for-demand movie data and information resources can coexist within the system.

Applicant also argues in reference to Linden. However, no Linden reference has been cited or used in the prosecution of this case.

Respectfully, claim 3 is not in condition for allowance.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Ustaris whose telephone number is (703) 305-0377. The examiner can normally be reached on Monday-Friday with alternate Fridays off from 7:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380. The fax phone number for this Group is (703) 872-9306.

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 305-4700.



JGU

June 29, 2004



VIVEK SRIVASTAVA
PRIMARY EXAMINER